

EXHIBIT 3

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1 Pages 1 - 20

2 UNITED STATES DISTRICT COURT

3 NORTHERN DISTRICT OF CALIFORNIA

4 BEFORE THE HONORABLE SUSAN ILLSTON

5 UNITED STATES OF AMERICA,)
6 Plaintiff,)
7 vs.) NO. CR-08-0804 SI
8 CHUNGHWA PICTURES TUBES,)
9 Defendant.) SAN FRANCISCO, CALIFORNIA
) WEDNESDAY, JANUARY 14, 2008
) 4:35 P.M.
10 _____)

11 TRANSCRIPT OF PROCEEDINGS

12 (CHANGE OF PLEA AND SENTENCING HEARING)

13 APPEARANCES:

14 **For Plaintiff:**

15 U.S. Department of Justice
16 Antitrust Division - 10th Floor
17 450 Golden Gate Avenue
18 San Francisco, CA 94103
19 BY: **HEATHER S. TEWKSBURY, ESQ.**
20 and **NIALL E. LYNCH, ESQ.**

21 **For Defendant:**

22 GIBSON, DUNN & CRUTCHER, LLP
23 555 Mission Street, Suite 3000
24 San Francisco, CA 94105
25 BY: **GARY R. SPRATLING, ESQ.**
and **JOEL S. SANDERS, ESQ.**

26 **Reported by: MARGARET "MARGO" GURULE, CSR #12976**
27 **PRO TEM COURT REPORTER, USDC**

January 14, 2008; 4:37 p.m.; Courtroom 10, 19th Floor

Tracy Sutton - Courtroom Deputy

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PROCEEDINGS

THE COURT: Good afternoon. You may be seated.

THE CLERK: Calling Criminal 08-804, United States
vs. Chunghwa --

MR. SPRATLING: Chunghwa.

THE CLERK: Chunghwa Picture Tubes.

THE COURT: Please state your appearances.

11 MS. TEWKSBURY: Good afternoon, Your Honor. Heather
12 Tewksbury and Niall Lynch on behalf of the United States.

THE COURT: Good afternoon.

14 **MR. SPRATLING:** Good afternoon, Your Honor. Gary
15 Spratling and Joel Sanders, from Gibson, Dunn & Crutcher, on
16 behalf of the Defendant, Chunghwa Picture Tubes, Ltd. And with
17 me is Dr. Terng-Yaw Lin. Spelling, L-I-N.

18 Dr. Lin is the Vice-President of Legal and
19 Intellectual Property General Division of the Defendant
20 Chunghwa Picture Tubes. And he is appearing here today as the
21 corporate representative pursuant to a resolution of the board
22 of directors.

23 **THE COURT:** All right. Thank you. Welcome to you,
24 Dr. Yaw.

THE DEFENDANT: Good afternoon.

1 **THE COURT:** I understand that you would like to enter
2 a changed plea for Chunghwa Picture Tubes, correct?

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** And you would also like to proceed on an
5 expedited basis to sentencing this afternoon, correct?

6 **MR. SPRATLING:** Correct.

7 **THE COURT:** All right. Well, I'm prepared to do both
8 of those things.

9 Now, Mr. -- is it Mr. --

10 **MR. SPRATLING:** It's Dr. Lin --

11 **THE COURT:** Dr. Lin.

12 **MR. SPRATLING:** -- L-I-N.

13 **THE COURT:** I wrote it down, but I couldn't read my
14 writing.

15 Dr. Lin, I need to ask you some questions.

16 **THE DEFENDANT:** Yes.

17 **THE COURT:** And before you answer them, you need to
18 swear to tell the truth.

19 So, Tracy, would you swear Dr. Lin, please.

20 **THE CLERK:** Raise your right hand.

21 *(Oath administered.)*

22 **THE COURT:** You understand you could be punished if
23 you deliberately answer any of my questions falsely?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** All right. You're able to speak and

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1 understand English?

2 **THE DEFENDANT:** Yes, I do.

3 **THE COURT:** All right. If any of my questions are
4 unclear to you, please let me know, and I'll try to make them
5 clearer. All right?

6 **THE DEFENDANT:** Yes, because English is my second
7 language. English is my second language.

8 **THE COURT:** All right. As I said, if I'm not clear,
9 please let me know. All right?

10 **THE DEFENDANT:** Okay.

11 **THE COURT:** Have you had any drugs, medicine or
12 pills, or drunk any alcoholic beverages in the last 24 hours?

13 **THE DEFENDANT:** No.

14 **THE COURT:** All right. Do you understand that your
15 company, your corporation, has a right to a lawyer at all
16 stages of these proceedings including trial if the matter -- if
17 you wish to take the matter to trial?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** Have you had enough time to talk to your
20 lawyers about the case?

21 **THE DEFENDANT:** Yes, I do.

22 **THE COURT:** Have they explained to you what the
23 government would have to prove before you could be convicted of
24 these charges?

25 **THE DEFENDANT:** Yes.

1 **THE COURT:** Are you satisfied with your lawyer's
2 representation of the company?

3 **THE DEFENDANT:** Yes, very much.

4 **THE COURT:** All right. I understand that the
5 defendant was arraigned on an information this morning?

6 **MS. TEWKSBURY:** That's correct, and he also signed a
7 waiver of indictment, as well.

8 **THE COURT:** All right. Ms. Tewksbury, can you
9 summarize for me and for Dr. Lin the elements of the offense to
10 which he's proposing to plead guilty?

11 **MS. TEWKSBURY:** Yes, Your Honor. The defendant is
12 charged by information with one count of violating Section 1 of
13 the Sherman Act, 15 U.S.C. Section 1. To establish certain
14 allegations, the United States must prove beyond a reasonable
15 doubt that the defendant entered into a conspiracy. The
16 conspiracy was under reasonable restraint of trade, and the
17 conspiracy affected interstate commerce in the United States.

18 **THE COURT:** Do you understand those are the elements
19 of the offense that you're proposing to plead to here?

20 **THE DEFENDANT:** Yes.

21 **THE COURT:** And do you understand that the maximum
22 punishment for that offense is a fine in an amount equal to the
23 greatest of \$100 million or twice the gross pecuniary gain the
24 conspirators derived from the crime, or twice the gross
25 pecuniary loss caused to the victims of the crime by the

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1 conspirators. Do you understand that?

2 **THE DEFENDANT:** Yes, I understand.

3 **THE COURT:** And do you understand that I may impose a
4 term of probation of at least a year but not more than five
5 years?

6 **THE DEFENDANT:** Yes, I understand.

7 **THE COURT:** And I may order restitution to the
8 victims of the offense. Do you understand that?

9 **THE DEFENDANT:** Yes, I understand.

10 **THE COURT:** And that I must order that you pay a \$400
11 special assessment. Do you understand that?

12 **THE DEFENDANT:** Yes.

13 **THE COURT:** Now, do you understand that under the
14 Constitution and laws of the United States, this defendant is
15 entitled to plead not guilty to these charges. And if it
16 pleads not guilty, it will be presumed innocent of the charges
17 unless and until the government proves beyond a reasonable
18 doubt that it's guilty of every element of this offense. Do
19 you understand that?

20 **THE DEFENDANT:** Yes, I understand.

21 **THE COURT:** And it would be up to the government to
22 present evidence to prove the defendant is guilty of every
23 element. Do you understand that?

24 **THE DEFENDANT:** Yes, I understand.

25 **THE COURT:** And if you want, if the corporation

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1 wanted to, it would have the right to have these matters heard
2 by a jury. And if it chose to have a jury trial, it could not
3 be convicted unless all 12 jurors unanimously agreed that the
4 company was guilty beyond a reasonable doubt of every element
5 of this offense. Do you understand that?

6 **THE DEFENDANT:** Yes, I do.

7 **THE COURT:** And the government would be required to
8 put on evidence, to call witnesses, to introduce documents, all
9 to prove the guilt of the defendant. Do you understand that?

10 **THE DEFENDANT:** Yes, I understand.

11 **THE COURT:** And your lawyer would have the right to
12 cross-examine the government's witnesses and challenge the
13 government's evidence. Do you understand that?

14 **THE DEFENDANT:** Yes, I understand.

15 **THE COURT:** And your lawyer would have a right to
16 call witnesses on your behalf to present your side of the
17 story. Do you understand that?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** And your company could choose anyone it
20 wanted to testify in its behalf if it chose to. Do you
21 understand that?

22 **THE DEFENDANT:** Yes.

23 **THE COURT:** And if you plead guilty here today and
24 if I accept the guilty plea, your company will give up all the
25 trial rights we talked about, the right to confront the

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1 witnesses against it, the right to put the government to its
2 proof, and the company will be found guilty based on your
3 statement here in open court that it is guilty. Do you
4 understand that?

5 **THE DEFENDANT:** Yes, I understand.

6 **THE COURT:** And do you understand that you can't
7 appeal from the finding of guilt because you will have admitted
8 it. Do you understand that?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** And we will get to the plea agreement in
11 a moment. But if I accept this plea agreement, the company
12 will not be able to appeal from the finding of its guilt from
13 any orders I may have entered, and you would give up your right
14 to appeal from any challenge to the sentence that I impose, and
15 the only appellate challenge or collateral attack challenge
16 that would be available would be a contention that your lawyers
17 were ineffective. Do you understand that?

18 **THE DEFENDANT:** Yes, I understand.

19 **THE COURT:** Has anyone threatened or forced you or
20 your company to enter this guilty plea?

21 **THE DEFENDANT:** No.

22 **THE COURT:** Is there a plea agreement in this matter?

23 **MS. TEWKSBURY:** Yes. I would like to hand you the
24 original along with the board resolution.

25 **THE COURT:** I'm holding a document entitled, "Plea

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1 Agreement." And on page 15 of this agreement, in English, is
2 typed "Terng-Yaw Lin."

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** Now, did you sign that document, sir?

5 **THE DEFENDANT:** Yes, I do.

6 **THE COURT:** Had you read it through before you signed
7 it?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** And are you the individual referred to in
10 the resolution of the board of directors dated November 7,
11 2008, in paragraphs 2, 3 and 4 where it authorizes Terng
12 Yaw-Lin to undertake certain activities on behalf of the
13 corporation?

14 **THE DEFENDANT:** Yes.

15 **THE COURT:** All right. And have you signed this plea
16 agreement consistent with the authorization received from the
17 board on November 7, 2008?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** And that's your belief, as well,
20 Mr. Spratling?

21 **MR. SPRATLING:** It is, Your Honor.

22 **THE COURT:** Okay. Mr. Spratling, can you summarize
23 for me and for Dr. Lin the general terms of this plea
24 agreement?

25 **MR. SPRATLING:** Yes, Your Honor. The terms of the

1 plea agreement are that Chunghwa will plead guilty to a single
2 count of violating Section 1 of the Sherman Act with respect to
3 the sales of TFT LCD panels. The government has agreed, as set
4 forth in paragraph 8, to jointly recommend a corporate fine of
5 \$65 million. The fine will be paid in installments with
6 interest over a period of five years.

7 Chunghwa agrees, as set forth in paragraph 13, to
8 cooperate fully with the government investigation by producing,
9 if requested, non-privileged documents, information, and
10 materials, wherever located, and making its best efforts to
11 secure the ongoing, full and truthful cooperation of current or
12 former employees, including making those individuals available
13 for interviews or testimony if requested. In return for this
14 cooperation, the government agrees not to prosecute Chunghwa
15 for any acts or offenses committed before the date of the plea
16 agreement in connection with the sale of TFT LCD panels.

17 The government also agrees, with the exception of
18 seven individuals identified in paragraph 16(a), not to
19 prosecute current or former employees of Chunghwa, so long as
20 these individuals cooperate fully in response to the
21 government's request.

22 **THE COURT:** Now, this is under Rule 11(c)(1)(C), is
23 it?

24 **MR. SPRATLING:** That's correct, Your Honor.

25 **THE COURT:** So that if I agree with the proposed

1 sentence that's included in the plea agreement, then the
2 defendant will not be able to withdrew its plea. If I were to
3 decide that a more severe sentence were appropriate, then you
4 would have an opportunity to reconsider. And if I were to
5 decide that a less severe sentence is appropriate, then the
6 government would have an opportunity to reconsider. But as
7 long as I do what this says, this is it. You can't change your
8 mind. Do you understand that?

9 **THE DEFENDANT:** Yes, I understand.

10 **THE COURT:** Okay. Is there any agreement,
11 Mr. Spratling, that the individuals at Chunghwa will have
12 agreed not to talk to anybody besides the government about the
13 case?

14 **MR. SPRATLING:** There is no such agreement.

15 **THE COURT:** And the request is that there be no term
16 of probation, correct?

17 **MR. SPRATLING:** Yes.

18 **THE COURT:** And that there be no restitution?

19 **MR. SPRATLING:** That's correct. It's jointly
20 recommended, yes.

21 **THE COURT:** Right. In light of the ongoing civil
22 matters which could bring more of a recovery, should there be a
23 restitutionary order, as well as recovery in the civil
24 litigation, correct?

25 **MR. SPRATLING:** Yes, Your Honor.

1 **THE COURT:** Are those all the terms that you
2 understood to be part of this plea arrangement, sir?

3 **THE DEFENDANT:** Yes, Your Honor.

4 **THE COURT:** Okay. Ms. Tewksbury, can you tell me
5 what the government would be prepared to prove should this
6 matter go to trial?

7 **MS. TEWKSBURY:** Yes, Your Honor.

8 Your Honor, had this case gone to trial, the United
9 States would have presented evidence that proved the following
10 facts to establish a violation of Section 1 of the Sherman Act
11 in this case. For purposes of the plea agreement, the relevant
12 period is that period from on or about September 14, 2001, to
13 on or about December 1, 2006.

14 During the relevant period, Chunghwa Pictures Tubes,
15 Ltd., commonly referred to as CPT, a corporation organized and
16 existing under the laws of Taiwan, Republic of China, sold thin
17 filled transistor liquid crystal displays, more commonly known
18 as TFT LCD panels, into various markets including the United
19 States. The defendant has its headquarters and principal place
20 of business in Taoyuan, Taiwan, Republic of China. During the
21 relevant period, the defendant was a producer of TFT LCD, was
22 engaged in the sale of TFT LCD in the United States and
23 elsewhere, and employed 5,000 or more individuals.

24 TFT LCD are glass panels composed of an array of tiny
25 pixels that are electronically manipulated in order to display

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1 images. TFT LCD are manufactured in a broad range of sizes and
2 specifications for use in televisions, notebook computers,
3 desktop monitors, mobile devices and other applications.

4 During the relevant period, the defendant, through
5 its officers and employees, including high-level personnel of
6 the defendant, participated in a conspiracy among major TFT LCD
7 producers, the primary purpose of which was to fix the price of
8 TFT LCD sold in the United States and elsewhere.

9 In furtherance of the conspiracy, the defendant,
10 through its officers and employees, engaged in discussions and
11 attended meetings, including group meetings commonly referred
12 to by the participants as "crystal meetings" with
13 representatives of other major TFT LCD producers. During these
14 discussions and meetings, agreements were reached to fix the
15 price of TFT LCD to be sold in the United States and elsewhere.

16 During the relevant period, sales of TFT LCD by the
17 defendant affected U.S. commerce totaled \$357,677,000.

18 During the relevant time period, TFT LCD sold by one
19 or more of the conspirator firms and equipment and supplies
20 necessary to the production and distribution of TFT LCD, as
21 well as payments for TFT LCD traveled in interstate and foreign
22 commerce. The business activities of the defendant and its
23 co-conspirators in connection with the production and sale of
24 TFT LCD affected by the conspiracy were within the flow of and
25 substantially affected interstate and foreign trade and

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1 commerce. Acts in furtherance of this conspiracy were carried
2 out within the Northern District of California. TFT LCD
3 affected by this conspiracy were sold by one or more of the
4 conspirators to customers in this district.

5 **THE COURT:** Mr. Spratling, do you agree the
6 government is in a position to put on such proof?

7 **MR. SPRATLING:** Yes, I do, Your Honor.

8 **THE COURT:** And Mr. -- Dr. Lin, did you hear what
9 Ms. Tewksbury just said?

10 **THE DEFENDANT:** Yes, it's true.

11 **THE COURT:** Are those things true?

12 **THE DEFENDANT:** Yes, it's true.

13 **THE COURT:** Tell me in your own words what your
14 company did that makes it guilty of this offense.

15 **THE DEFENDANT:** Yes. As set forth in paragraph 4 of
16 the plea agreement, Chunghwa Picture Tubes participated in the
17 conspiracy with LCD producers to fix prices during the period
18 of after September 14, 2001 until December 12th of 2006.

19 **THE COURT:** All right. And do you admit as true the
20 other matters that Ms. Tewksbury stated a moment ago?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** And have you read carefully the materials
23 that are set out here in paragraph 4, subparagraphs A, B, C, D
24 and E?

25 **THE DEFENDANT:** Yes.

1 **THE COURT:** And are all of those things true?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** Was the dollar value of commerce included
4 in this paragraph?

5 **MS. TEWKSBURY:** It was not, Your Honor.

6 **THE COURT:** And what was the dollar value of
7 commerce?

8 **MS. TEWKSBURY:** \$357,677,000.

9 **THE COURT:** Do you admit that's true, as well, sir?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** Okay. Is there anything else you would
12 like me to inquire of Dr. Lin?

13 **MS. TEWKSBURY:** No, Your Honor.

14 **THE COURT:** All right. Well, I think there is a
15 factual basis for your plea of guilty; that it is freely and
16 voluntarily given; and that the company is guilty.

17 So, therefore, Tracy, would you please take Dr. Lin's
18 plea to the information.

19 **THE CLERK:** Okay. Chunghwa Picture Tubes, Ltd., has
20 been charged in a single count information of a violation of
21 Title 15 United States Code Section 1, which is price fixing.

22 How do you wish to plead to the single count
23 information, guilty or not guilty?

24 **THE DEFENDANT:** Guilty.

25 **THE CLERK:** Thank you.

1 **THE COURT:** All right. Well, I will accept that
2 guilty plea.

3 Now, your lawyers have requested that I go ahead and
4 impose sentence at this time, as well. Usually there is a
5 delay between the guilty plea and the sentence. Usually a
6 report is prepared by the probation office, which helps me
7 understand a little bit more about the case and how the
8 sentence should be crafted. But the lawyers have suggested
9 that there is enough information already available to me to
10 make a reasonable sentencing decision, and they have requested
11 that I do it today. Is that what you would like also, sir?

12 **THE DEFENDANT:** Yes, Your Honor.

13 **THE COURT:** And you understand that you're giving up
14 your right to have the probation report prepared?

15 **THE DEFENDANT:** Yes.

16 **THE COURT:** And that's okay with you?

17 **THE DEFENDANT:** Yes.

18 **THE COURT:** All right. Well, I do find that there is
19 enough information provided in the plea agreement and the
20 various memos that have been submitted to me, the joint memos
21 in support of the plea agreement and in support of an expedited
22 sentencing to make an informed sentencing decision.

23 So I agree under local Rule 32-1(b) to go ahead and
24 sentence today. And I should mention that there was also a
25 motion for a downward departure by the government based on

1 substantial assistance.

2 **MS. TEWKSBURY:** That's correct.

3 **THE COURT:** I find that the applicable guideline
4 calculation is as follows: Based on the volume of commerce
5 affected, which has been agreed to, which is \$357,677,000 and
6 that 20 percent of that is a base fine, that would be a base
7 fine of \$71,535,400.

8 The culpability score is calculated based on the
9 factors set out in Section 8(c)2.5, the various subparts of it.
10 And the calculation as reflected in the government's memo --
11 and I have gone over that and I accept it as correct -- is that
12 the total culpability score is 8. Therefore, the minimum and
13 maximum multiplies under 8(c)2.6 are 1.6 to 3.2. So that the
14 minimum and maximum fine ranges under 8(c)2.7 would be
15 \$114,456,640, as a minimum, to \$228,913,280, as a maximum.

16 However, the government has moved under 8(c)4.1 of
17 the Sentencing Guidelines for a downward departure to a fine of
18 \$65,000,000, due in part to the defendant's substantial
19 assistance which it as outlined in the confidential memorandum
20 submitted to the Court. And I will grant the motion for
21 downward departure and I agree on the \$65,000,000 fine. So I
22 am prepared to go ahead and impose sentence as set out in the
23 plea agreement.

24 Did you wish to be heard, Mr. Spratling, on any point
25 before I do so?

1 **MR. SPRATLING:** No, Your Honor.

2 **THE COURT:** All right. Dr. Lin, do you want to say
3 anything before I impose sentence?

4 **THE DEFENDANT:** No.

5 **THE COURT:** All right. Ms. Tewksbury, did you to
6 want to say anything?

7 **MS. TEWKSBURY:** No.

8 **THE COURT:** All right. And I do agree not to impose
9 restitution on account of the pending civil actions, but I
10 remain concerned that the -- that the civil actions not get
11 delayed or hampered by the criminal. I realize that both are
12 going on at the same time. But Mr. Spratling has indicated
13 there is no agreement here that the company won't testify if
14 required to testify in the civil matters as well as in the
15 federal actions. And so relying on that, then I'm going to
16 agree not to impose restitution in this case.

17 All right. Pursuant to the Sentencing Reform Act of
18 1984, I hereby impose the following sentence on Defendant
19 Chunghwa Picture Tubes, Ltd. The defendant shall pay a fine of
20 \$65,000,000 to the United States. There shall be no term of
21 probation. The fine is payable \$11 million within 30 days from
22 today's date; an additional \$11 million, plus accrued interest,
23 on each of the following four anniversary dates of the first
24 payment; and a final \$10 million, plus accrued interest
25 payment, on the fifth anniversary date. And the defendant may

1 prepay at any time before the five-year anniversary. And
2 Chunghwa is further ordered to pay \$400 special assessment,
3 which is due immediately. And I think that's it.

4 **THE CLERK:** You said \$400?

5 **THE COURT:** \$400.

6 **MS. TEWKSBURY:** That's correct, yes.

7 **THE COURT:** Anything else?

8 **MR. SPRATLING:** No, Your Honor.

9 **THE DEFENDANT:** No, Your Honor.

10 **THE COURT:** Thank you.

11 **THE CLERK:** Don't go away. I have a form that I need
12 to give you.

13 **MR. SPRATLING:** Thank you.

14 **THE DEFENDANT:** Thank you.

15 **THE COURT:** Court is in recess.

16 *(Hearing adjourned at 4:59 p.m.)*

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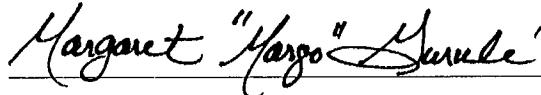
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1 CERTIFICATE OF REPORTER

2 I, MARGARET "MARGO" GURULE, Pro Tem Court Reporter
3 for the United States Court, Northern District of California,
4 hereby certify that the foregoing proceedings in Case
5 No. CR-08-0804, USA v. Chunghwa Picture Tubes were reported by
6 me, a Certified Shorthand Reporter, and were thereafter
7 transcribed under my direction into typewriting; that the
8 foregoing is a true record of said proceedings as bound by me
9 at the time of filing.

10 The validity of the reporter's certification of said
11 transcript may be void upon disassembly and/or removal from the
12 court file.

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19 /s/
20 MARGARET "MARGO" GURULE
CSR No. 12976
August 18, 2009
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